

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DRAKE A. EDWARDS,

Plaintiff,

:

Case No. 3:14-cv-374

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

DAYTON VETERANS MEDICAL CENTER,

Defendant.

:

**REPORT AND RECOMMENDATIONS REGARDING APPEAL *IN*
*FORMA PAUPERIS***

This case is before the Court on Plaintiff's Motion to Proceed on Appeal *in forma pauperis* (Doc. No. 15). The case was dismissed without prejudice because Plaintiff failed, despite notice, to achieve service of process on the Defendant within 120 days of filing. When the Magistrate Judge recommended dismissal on that basis, Plaintiff responded with Objections mentioning writs of execution under the Ohio Revised Code. Since the case was dismissed without prejudice, he is not barred by *res judicata* from refileing it. But an appeal is objectively frivolous. The Court notes that this is one of sixteen cases filed by Plaintiff in the last fifteen years, none of which has resulted in an award.

The Court should deny leave to appeal *in forma pauperis* and certify to the Court of Appeals that the appeal, which has already been taken, is objectively frivolous.

April 10, 2015.

s/ ***Michael R. Merz***
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).